



December 6, 2021

Honorable Nancy Joseph
United States District Court, Eastern District of Wisconsin
517 East Wisconsin Avenue
Milwaukee, Wisconsin 53202

RE : Update on Discovery Issues

Dear Judge Joseph,

Please accept this letter as a discovery update for the court. Plaintiffs understood that if there are any discovery issues that parties are to try to work it out and then get the court involved. As the defendants asked the court for a discovery conference in their latest letter (ECF #112) of November 23, 2021, we seek clarification as the court scheduled a status conference on December 7, 2021.

At the courts direction, Defendants and Plaintiffs met on November 11 and November 17, 2021 to discuss a way forward as well as to attempt to move forward on discovery issues. Both meetings were recorded. For ease of reference we have attached for the court's review the table of Plaintiffs' outstanding discovery issues with notations on what has happened to date. (Attached Exhibit A - Update Plaintiffs' table regarding discovery issues)

On November 1, 2021 parties met with the court to discuss outstanding discovery issues. At the court's direction, by 11/5/21, the defendants were to provide a date certain for when Plaintiffs were to receive all emails. This did not happen. Per ECF #112, Defendants now ask for January 7, 2022 as the date certain to produce all emails. It should be noted that this is 367 days after Plaintiff's original request for documents. Additionally, per your scheduling order, discovery is to be completed by December 31, 2021.

Though we were successful in setting some restrictions sought by the Defendants, such as limited time duration and scope with search terms, as well as agreeing to "attorneys eyes only" status for native file email information, there are specific and long-outstanding discovery issues which remain at an impasse.

Specifically, defendants stated that Plaintiff's would receive two emails and the metadata of both emails sent to David Clarke. The first email was identified by Attorney Zellner as one dated 11/18/20 and sent by Luke Vetter to David Clarke, and copied to Barry Weber. In the conference with the court, Attorney Zellner stated that she would send the two emails with the metadata/native file information as well, to the Plaintiffs by 11/8/21.

Plaintiffs still have not received these emails.

In addition, Plaintiffs sought Defendant George M. Schimmel's terms of reference, contract, employment personnel file, and/or employment file during the entirety of his contractual relationship with the City of Wauwatosa which we understand started in 1992. Defendants counsel claim that Schimmel, who has represented himself, as well as through counsel that he is contracted with the City of Wauwatosa confirmed there is no contract, no personnel file, and no employee file. Further, Defendants have failed to provide Schimmel's terms of reference, which would simply be found in the bid application for this contracted employment as well as in the notice and documents for the position he holds. If Defendants are willing to stipulate that also no bid, notice, or any documents which provide terms of reference for Schimmel exist then we are happy to move forward.

Plaintiffs confirmed with the Court, and in our subsequent meetings with Defendants' counsel that no social media handles have been received to date (and this continues as of the filing of this letter) Rather, Defendants provided a name, **La'Sha Jones**, as the name used by City of Wauwatosa employee Dominick Ratkowski to setup a facebook account. Furthermore, Defendants then provided a link which was simply the initial login landing page for facebook. As for twitter accounts, Defendants now assert that any twitter handle has been deactivated with no explanation as to why or when, despite notice/spoilation and preservation letters dating from October 11, 2020.

Plaintiffs significantly reduced the number and extent of documents sought, particularly regarding emails. However, since our previous status conference with this Court on 11/1/21, Defendants have not produced one single email.

To date, Plaintiffs have complied with discovery requests and have given Defendant's documents that they have sought since the court's status conference. The continued and repeated misrepresentations, failure to produce, and lack of compliance with court orders, can only be interpreted as a continual and intentional strategy by Defendants to deliberately delay, increase costs and expenses and to frustrate the process. Plaintiffs continue to act in good faith and are doing everything we can to move this case forward.

Warm regards,

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